

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 943

Short Title: Community Colleges Optional Retirement.

(Public)

Sponsors: Senators Lee; Garwood and Jordan.

Referred to: Pensions & Retirement and Aging.

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN OPTIONAL RETIREMENT PROGRAM FOR THE
NORTH CAROLINA COMMUNITY COLLEGES SYSTEM.

SECTION 1. Article 1 of Chapter 135 of the General Statutes is amended by
adding a new section to read:

"§ 135-5.4. Optional retirement program for State-funded community colleges.

(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the North Carolina Community Colleges System, ("System"). The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of administrators, faculty, and staff of State-funded community colleges and employees of the North Carolina Community Colleges System administrative office who are exempt from the State Personnel Act, all of whom are appointed after the implementation of the Program and who elect membership as required by subsection (b) of this section. Under the Optional Retirement Program, the State and the participant shall contribute, to the extent authorized or required, toward the purchase of such contracts or deposited in such trust on the participant's behalf.

(b) Participation in the Optional Retirement Program shall be governed as follows:

- (1) Employees initially appointed on or after the implementation of the Optional Retirement Program shall at the same time of entering upon eligible employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to participate in the Optional Retirement Program. This election shall be in writing and filed with the Retirement System and with the employing institution and shall be effective as of the date of entry into eligible service.

1 (2) An election to participate in the Optional Retirement Program shall be
2 irrevocable. An eligible employee failing to elect to participate in the
3 Optional Retirement Program at the time of entry into eligible service
4 shall automatically be enrolled as a member of the Retirement System.

5 (3) No election by an eligible employee of the Optional Retirement
6 Program shall be effective unless it is accompanied by an appropriate
7 application for the issuance of a contract or contracts or trust
8 participation under the Program.

9 (4) If any participant having less than five years coverage under the
10 Optional Retirement Program leaves the employ of the System and
11 either retires or commences employment with an employer not having
12 a retirement program with the same company underwriting the
13 participant's annuity contract, regardless of whether the annuity
14 contract is held by the participant, a trust, or the Retirement System,
15 the participant's interest in the Optional Retirement Program
16 attributable to contributions of the employing institution shall be
17 forfeited and shall either (i) be refunded to the employing institution
18 and forthwith paid by it to the Retirement System and credited to the
19 pension accumulation fund or (ii) be paid directly to the Retirement
20 System and credited to the pension accumulation fund.

21 (c) Each employing institution shall contribute on behalf of each participant in
22 the Optional Retirement Program an amount equal to a percentage of the participant's
23 compensation as established from time to time by the General Assembly. Each
24 participant shall contribute the amount that he or she would be required to contribute if
25 a member of the Retirement System. Contributions authorized or required by the
26 provisions of this subsection on behalf of each participant shall be made, consistent with
27 section 414(h) of the Internal Revenue Code, by salary reduction according to rules and
28 regulations established by the employing institution. Additional personal contributions
29 may also be made by a participant by payroll deduction or salary reduction to an annuity
30 or retirement income plan established pursuant to G.S. 115D-25. Payment of
31 contributions shall be made by the employing institution to the designated company or
32 companies underwriting the annuities or the trustees for the benefit of each participant,
33 and this employer contribution shall not be subject to any State tax if made under the
34 Optional Retirement Program or, otherwise, by salary reduction.

35 (d) The System shall designate the company or companies from which contracts
36 are to be purchased or the trustee responsible for the investment of contributions under
37 the Optional Retirement Program and shall approve the form and contents of such
38 contracts or trust agreement. In making this designation and giving such approval, the
39 Board shall give due consideration to the following:

40 (1) The nature and extent of the rights and benefits to be provided by these
41 contracts or trust agreement for participants and their beneficiaries;

42 (2) The relation of these rights and benefits to the amount of contributions
43 to be made;

1 (3) The suitability of these rights and benefits to the needs of the
2 participants and the interest of the institutions of the System in
3 recruiting and retaining faculty in a national market; and

4 (4) The ability of the designated company or companies underwriting the
5 annuity contracts or trust agreement to provide these suitable rights
6 and benefits under such contracts or trust agreement for these
7 purposes.

8 In lieu of such designation and in order to provide a more efficient, cost-effective,
9 and flexible Program, the System may designate the company or companies designated
10 for the Optional Retirement Program for State institutions of higher education as
11 prescribed in G.S. 135-5.1(d).

12 Notwithstanding the provisions of this subsection, no contractual relationship
13 established under the Optional Retirement Program pursuant to the authority granted by
14 Chapter 338, Session Laws of 1971, is deemed terminated by the provisions of this
15 section.

16 (e) The System or employing institution may provide for the administration of
17 the Optional Retirement Program and may perform or authorize the performance of all
18 functions necessary for its administration.

19 (f) Any eligible employee electing to participate in the Optional Retirement
20 Program is ineligible for membership in the Retirement System so long as he or she
21 remains employed in any eligible position within the System, and, in this event, he or
22 she shall continue to participate in the Optional Retirement Program.

23 (g) No retirement benefit, death benefit, or other benefit under the Optional
24 Retirement Program shall be paid by the State of North Carolina, or the System, or the
25 Board of Trustees of the Teachers' and State Employees' Retirement System with
26 respect to any employee selecting and participating in the Optional Retirement Program
27 or with respect to any beneficiary of that employee. Benefits shall be payable to
28 participants or their beneficiaries only by the designated company in accordance with
29 the terms of the contracts or trust agreement."

30 **SECTION 2.** G.S. 135-1(25) reads as rewritten:

31 "(25) "Teacher" shall mean any teacher, helping teacher, librarian, principal,
32 supervisor, superintendent of public schools or any full-time
33 employee, city or county, superintendent of public instruction, or any
34 full-time employee of Department of Public Instruction, president,
35 dean or teacher, or any full-time employee in any educational
36 institution supported by and under the control of the State: Provided,
37 that the term "teacher" shall not include any part-time, temporary, or
38 substitute teacher or employee, and shall not include those
39 participating in an optional retirement program provided for in ~~G.S.~~
40 ~~135-5.1.~~ G.S. 135-5.1 or G.S. 135-5.4. In all cases of doubt, the Board
41 of Trustees, hereinafter [hereinbefore] defined, shall determine
42 whether any person is a teacher as defined in this Chapter."

43 **SECTION 3.** This act becomes effective July 1, 2001.